

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>CASEY LOWE</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,021,812
<b>SUPERIOR INDUSTRIES INTERNATIONAL</b>	)	
Self-Insured Respondent	)	

**ORDER**

Claimant appealed the June 7, 2005, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

**ISSUES**

Claimant alleges she injured her left knee in three separate incidents while working for respondent. Claimant alleges the last incident occurred on March 8, 2005.

In the June 7, 2005, Order, Judge Hursh denied claimant's request for preliminary hearing benefits. The Judge ruled claimant's first two left knee injuries had resolved and that she failed to prove she sustained a work-related knee injury on March 8, 2005. The Judge concluded, in part:

In short, there are more reasons to disbelieve the claimant's testimony than the testimony of Edwards. The claimant failed to prove by a preponderance of the credible evidence that she suffered a work related injury on March 8, 2005. The claimant's request for workers compensation benefits is denied.<sup>1</sup>

Claimant contends Judge Hursh erred. Claimant argues the Judge relied upon unreliable eyewitness testimony to deny her request for benefits. Accordingly, claimant requests the Board to reverse the June 7, 2005, Order.

Conversely, respondent requests the Board to affirm the Order.

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<sup>1</sup> ALJ Order (June 7, 2005) at 2.

The only issue before the Board on this appeal is whether claimant fell and injured her left knee on March 8, 2005, while working for respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the June 7, 2005, Order should be affirmed. The Board affirms the Judge's finding that claimant failed to prove she injured her left knee on March 8, 2005, while working for respondent.

Claimant testified she fell at work on March 8, 2005, and hit her head and left leg on the concrete floor. At the preliminary hearing, claimant testified she fell as she was walking down some steps and "either fell off the step or tripped off the step."<sup>2</sup> In an accident report, which claimant completed that day, she stated the accident occurred when she "turned around to walk off the stand & tripped off the step."<sup>3</sup>

But a co-worker, Belinda Edwards, testified she saw claimant leave the platform where they were working, walk down the steps to the plant floor, and sit down.

I saw her leave the platform and walk down to the floor and sit down and then, from a sit-down position, lay down. And I was facing her when this happened. My partner, Shirley Pruitt, was facing me. So she couldn't really see what happened. At that point, I yelled out what the hell are you doing.<sup>4</sup>

Considering the entire record, including the testimony from another co-worker, Shirley Pruitt, who testified that claimant initially complained she hurt her right knee in the alleged fall rather than the left knee, the Judge concluded claimant failed to prove she sustained a work-related injury on March 8, 2005. The Board agrees.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>5</sup>

**WHEREFORE**, the Board affirms the June 7, 2005, Order entered by Judge Hursh.

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<sup>2</sup> P.H. Trans. at 17.

<sup>3</sup> *Id.*, Resp. Ex. 1.

<sup>4</sup> *Id.* at 24-25.

<sup>5</sup> K.S.A. 44-534a(a)(2).

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 2005.

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
Troy A. Unruh, Attorney for Respondent  
Kenneth J. Hursh, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director